

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*
State Engineer

Plaintiff,

v.

ROMAN ARAGON, *et al.*,

Defendants.

69cv07941-MV/KK

RIO CHAMA STREAM SYSTEM

Section 3: Rio Cebolla

**[PROPOSED] SCHEDULING AND PRETRIAL ORDER FOR THE RIO CEBOLLA
SUBSECTION OF SECTION 3 OF THE RIO CHAMA STREAM SYSTEM**

This Order is entered pursuant to Fed.R.Civ.P. 16, and this Court's *Order Denying Motion for Pretrial Conference* (Doc. 11324, filed 01/26/18), to guide the pretrial and trial proceedings of the disputed water rights claims of those defendants in the Rio Cebolla Subsection of Section 3 of the Rio Chama Stream System ("Cebolla Subsection"). This order governs defendants who have filed objections to the priority dates and/or irrigation water requirements proposed by the State of New Mexico, *ex rel.* State Engineer ("State") within the Cebolla Subsection.

I. SCOPE OF PROCEEDING

This is a limited subfile proceeding to determine priority dates and irrigation water requirements for those water rights owned by defendants who have timely filed objections to the priority dates and/or irrigation water requirements proposed by the State as detailed in this Court's *Scheduling and Procedural Order for Determination of Priority Dates and Irrigation*

Water Requirements in the Rio Cebolla Subsection of Section 3 of the Rio Chama Stream System (Doc. 11280, filed 09/11/17). This phase of the adjudication concerns defendants' objections to the State's proposed determination of priority dates and irrigation water requirements for their own water rights.

The State and those defendants who have timely filed objections to the State's proposed priority dates and/or irrigation water requirements for their own water rights are the only parties to this action and are the only parties that may participate in the resolution of this issue. The State is represented by Special Assistant Attorneys General Ed Newville and Felicity Strachan. Defendants who retain an attorney for purposes of the trial shall inform the State and the Court as soon as possible of this fact, and such counsel shall immediately enter his or her appearance in the record.

II. BURDEN OF PROOF

Each individual defendant has the burden of proving the priority date and irrigation water requirements for his or her water right. If any defendant fails to meet or carry his or her burden of proof, the Court shall enter an order recognizing the priority dates and irrigation water requirements proposed by the State for the Cebolla Subsection.

III. STIPULATIONS

The parties stipulate and agree that venue is properly laid in this District, and that the United States District Court for the District of New Mexico has jurisdiction over the parties and the subject matter.

IV. THE OBJECTIONS

Pursuant to this Court's *Notice and Order to Show Cause in the Rio Cebolla Subsection*

of Section 3 of the Rio Chama Stream System (Doc. 11281, filed 09/11/17) and *Public Notice and Order to Show Cause* (Doc. 11282, filed 09/11/17), objections to the State's proposed priority dates and/or irrigation water requirements for the Cebolla Subsection were required to be filed no later than December 11, 2017. Four objections to the State's proposed priority dates and/or irrigation water requirements in the Cebolla Subsection were timely filed.

a. OBJECTION NO. 1 - Docket No. 11308, filed 12/04/17

The objectors named in this document are Angelo Archuleta, Nelda Archuleta, Margarita Maes Ryzdnski, Gilbert Maes, Jesus Maes, Lydia Maes Garcia, Ronie Maes, Azalea Maes, Celeste Maes, Immanuel Maes, Joshua Maes, Petra Maes, and Lorie Martinez. The State will address each person individually.

i. Angelo Archuleta

Angelo Archuleta is not a named defendant in this adjudication and does not have standing to object to the State's proposed priority dates and irrigation water requirements for the Cebolla Subsection.

ii. Nelda Archuleta

Nelda Archuleta is a named defendant in Subfile No. CHCB-001-0001C. Defendant Archuleta objects to the State's proposed priority date of 1883 for the surface water irrigation rights under Subfile No. CHCB-001-0001C.

iii. Margarita Maes Ryzdnski

Margarita Maes Ryzdnski is a named defendant in Subfile No. CHCB-001-0001B. Defendant Ryzdnski objects to the State's proposed priority date of 1883 for the surface water irrigation rights under Subfile No. CHCB-001-0001B.

iv. Gilbert Maes

Gilbert Maes is a named defendant under Subfile No. CHCB-001-0001D. Defendant Maes objects to the State's proposed priority date of 1883 for the surface water irrigation rights under Subfile No. CHCB-001-0001D.

v. Jesus Maes

Jesus Maes is not a named defendant in this adjudication and does not have standing to object to the State's proposed priority dates and irrigation water requirements for the Cebolla Subsection.

vi. Lydia Maes Garcia

Lydia Maes Garcia was formerly a named defendant under Subfile No. CHCB-001-0001E. On October 27, 2017, this Court entered its *Order Substituting Parties in Subfile No. CHCB-001-0001E*, substituting Ronnie Garcia for Lydia Maes Garcia (Doc. 11293). Accordingly, Lydia Maes Garcia is no longer a named defendant in this adjudication and does not have standing to object to the State's proposed priority dates and irrigation water requirements for the Cebolla Subsection.

vii. Ronie Maes

Ronie Maes is not a named defendant in this adjudication and does not have standing to object to the State's proposed priority dates and irrigation water requirements for the Cebolla Subsection.

viii. Azalea Maes

Azalea Maes is a named defendant under Subfile No. CHCB-001-0001F. Defendant Maes objects to the State's proposed a priority date of November 21, 1949 for the surface water

irrigation rights under this subfile.

ix. Celeste Maes

Celeste Maes is a named defendant under Subfile No. CHCB-001-0001F. Defendant Maes objects to the State's proposed priority date of November 21, 1949 for the surface water irrigation rights under this subfile.

x. Immanuel Maes

Immanuel Maes is a named defendant under Subfile No. CHCB-001-0001F. Defendant Maes objects to the State's proposed priority date of November 21, 1949 for the surface water irrigation rights under this subfile.

xi. Joshua Maes

Joshua Maes is a named defendant under Subfile No. CHCB-001-0001F. Defendant Maes objects to the State's proposed priority date of November 21, 1949 for the surface water irrigation rights under this subfile.

xii. Petra Maes

Petra Maes is a named defendant under Subfile No. CHCB-001-0001F. Defendant Maes objects to the State's proposed priority date of November 21, 1949 for the surface water irrigation rights under this subfile.

xiii. Lorie Martinez

Lorie Martinez is a named defendant under Subfile No. CHCB-001-0001F. Defendant Martinez objects to the State's proposed priority date of November 21, 1949 for the surface water irrigation rights under this subfile.

b. OBJECTION NO. 2 - Docket No. 11309, filed 12/11/17

This objection was filed by the Asociación de Acéquias Norteñas de Rio Arriba (“Acéquias Norteñas”), the Acequia Madre de Cebolla, and the Acequia del Pinavetal (collectively, “Acequias”) to the State’s proposed irrigation water requirements in the Cebolla Subsection. The Acéquias Norteñas is an umbrella organization that represents its member ditches along the Rio Chama. The Acequia Madre de Cebolla and the Acequia del Pinavetal are member ditches of the Acéquias Norteñas. Neither the Acéquias Norteñas, nor the Acequia Madre de Cebolla, nor the Acequia del Pinavetal, owns any water rights in the Cebolla Subsection.

The Acequias have objected to: 1) the State’s proposed Consumptive Irrigation Requirement (“CIR”) of 1.09 acre-feet per acre per year for all pre-1907 water rights in the Cebolla Subsection, 2) the State’s proposed Farm Delivery Requirement (“FDR”) of 2.725 acre-feet per acre per year for all pre-1907 water rights in the Cebolla Subsection, and 3) the State’s proposed Project Diversion Requirement (“PDR”) of 4.54 acre-feet per acre per year for all pre-1907 water rights in the Cebolla Subsection.

Under certain circumstances, acequias and acequia associations may act on behalf of their members without the express authorization of those members. However, as explained below, in the instant case, those circumstances are not present. Accordingly, the Acequias must demonstrate that each individual water right owner on the member ditches has authorized the Acequias to act on their behalf.

Under New Mexico law, individual irrigators under a community ditch or acequia are the owners of the water rights in the community ditch, and are the proper parties to an adjudication.

Snow v. Abalos, 18 N.M. 681, 140 P. 1044 (1914) (a water right under a ditch, “is a several right, owned and exercised by the individual” (at 695-696, 1049), and “the individual is a proper and necessary party in an action for the adjudication of water rights, where such rights are exercised through a community ditch” (at 699, 1050)).

A ditch may assert the interest of its members under limited circumstances, namely, where there is a common interest and the ditch’s interests are not antagonistic to those of the individual irrigators on the ditch. *La Luz Community Ditch Co. v. Town of Alamogordo*, 34 N.M. 127, 135, 279 P. 72, 75 (1929). In the instant case, there are differing interests among irrigators on the objecting Acequias.

While the State has proposed the figures cited above for pre-1907 surface water irrigation rights in the Cebolla Subsection, not all of the water rights under the Acequia Madre de Cebolla and the Acequia del Pinavetal are pre-1907 water rights. Under Subfile No. CHCB-001-0001F, the State has proposed a CIR of 1.09 acre-feet per acre per year, an FDR of 3.00 acre-feet per acre per year, and a PDR of 5.00 acre-feet per acre per year. These figures for FDR and PDR are higher than the State’s proposed irrigation water requirements for pre-1907 water rights on the Acequias. Accordingly, those defendants who own water rights under Subfile No. CHCB-001-0001F do not have the same interests as other defendants who have water rights on the Acequia Madre de Cebolla and the Acequia del Pinavetal.

For example, the individual defendants who filed their own objection under Subfile No. CHCB-001-0001F (identified in Objection 1 above) appear to also be included in Objection 2 filed by the Acequias. However, while the defendants under Subfile NO. CHCB-001-0001F filed an objection to the State’s proposed priority dates for their rights under the Acequia del

Pinavetal, none of those defendants has objected to the State's proposed irrigation water rights. In short, the Acequias have filed an objection on behalf of individuals who chose not to file an objection on their own behalf. This demonstrates that the Acequias' interests may be antagonistic to those of the individual water users on the Acequias.

Additionally, because the Acequias have not yet proposed their own figures for irrigation water rights in the Cebolla Subsection, individual irrigators have no way of knowing whether they support the Acequias' objection or not. In order for the Acequias' objection to proceed, it must be established which, if any, of the individual irrigators on the Acequia Madre de Cebolla and the Acequia del Pinavetal agrees to the irrigation water requirements proposed by the Acequias. Accordingly, no later than 60 days from the entry of this order, the Acequias will file a Statement indicating which individual water right owners have authorized the Acequias to act on their behalf and demonstrating that the Acequias have obtained the approval of each affected individual water right owner in support of the specific CIR, FDR, and PDR proposed by the Acequias.

c. OBJECTION NO. 3 - Docket No. 11310, filed 12/11/17

Charlie Chacon and Geralda M. Chacon ("Chacons") are named defendants in Subfile Nos. CHCB-001-0007, CHCB-002-0001A, CHCB-002-0001B, and CHCB-002-0009. The Chacons have objected to the priority date proposed by the State for their surface water irrigation rights and livestock watering rights under the Sanchez Ditch. The State has filed a motion to dismiss this portion of the Chacons' objection (Doc. 11313, filed 12/12/17). The State's motion is pending before this Court.

Additionally, the Chacons have objected to the State's proposed irrigation water

requirements for both their pre-1907 and post-1907 water rights under the subfiles listed above.

d. OBJECTION NO. 4 - Docket No. 11311, filed 12/11/17

Ronnie Garcia is a named defendant in Subfile No. CHCB-001-0001E. The State has proposed a priority date of 1883 for the surface water irrigation rights under this subfile.

V. DISCOVERY

Discovery begins immediately. All parties are expected to adhere to the Fed.R.Civ.P. 26 requirements of liberal, continuing, and voluntary disclosure. No later than 30 days from entry of this order, the parties shall provide to the opposing party:

- (A) The name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses.
- (B) A copy of, or a description by category and location, of all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claim or defenses.

The parties shall supplement and correct disclosures in accordance with Fed.R.Civ.P. 26(e).

VI. PRETRIAL DISCLOSURE

Pursuant to Fed.R.Civ.P. 26(a)(2), each party shall disclose the identity of any person who may present expert witness testimony at trial no later than 60 days from the entry of this order. This disclosure shall be accompanied by a written report prepared and signed by the witness in accordance with Fed.R.Civ.P. 26(2)(B). The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefore; the facts or data considered

by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the study and testimony; and a list of any other cases in which the witness has testified as an expert at trial or by deposition.

Discovery shall be completed no more than 90 days from the entry of this order. Service of interrogatories, requests for admission, or requests for production shall be considered timely only if the responses are due prior to that date. A notice of deposition shall be considered timely only if the deposition occurs prior to that date. Motions for extensions or changes to discovery deadlines are necessary only where the parties cannot agree, or where such changes will of necessity delay scheduled hearings. Agreements shall be memorialized by letter to the parties and to the Court.

VII. MOTIONS

Any dispositive motion or written objection to a proposed exhibit shall be filed no later than 120 days from entry of this order.

VIII. REQUEST FOR TRIAL SETTING AND FINAL PRETRIAL ORDER

No later than 120 days from the entry of this order, the parties shall enter a final pretrial order and request a trial setting and the scheduling of a final pretrial conference.

IX. TRIAL PREPARATION

a. Exhibits

The parties must confer regarding all trial exhibits other than rebuttal exhibits that cannot be anticipated before trial. The parties must file a “consolidated exhibit list identifying all

exhibits that the parties have stipulated are admissible" and a "consolidated exhibit list of all exhibits to which there are objections" no later than 30 calendar days before trial. The list of exhibits to which there are objections shall briefly state the nature of the objections. Objections not so disclosed, other than objections under rules 402 and 403 of the Federal Rules of Evidence, are waived, unless such failure to object is excused by the Court for good cause. Two copies of the uncontested and contested exhibits lists must be delivered to the judge's chambers.

The parties will also deliver to the judge's chambers two sets of each party's proposed trial exhibits in a tabbed binder, together with an index, no later than 15 calendar days before trial.

All exhibits must be marked before trial. The State's exhibits shall be marked and tabbed numerically. Defendants' exhibits shall be marked and tabbed alphabetically. The identification number or letter will remain the same whether the exhibit is admitted or not.

b. Witness Lists

Each party's witness list must be filed with the Clerk and served on all parties no later than 30 calendar days before trial.

c. Findings of Fact and Conclusions of Law

The parties must each submit to the judge's chambers proposed findings of fact and conclusions of law no later than 15 calendar days before trial. The parties shall submit the findings of fact and conclusions of law in a format compatible with Word, or as directed by the Court.

X. MODIFICATIONS – INTERPRETATION

This Pretrial Order, once entered, controls the course of trial and may only be amended

sua sponte by the Court, or by consent of the parties with Court approval. The pleadings will be deemed merged herein.

Respectfully submitted,

/s/ Felicity Strachan
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Certificate of Service

I certify that on February 18, 2018, I filed the foregoing electronically through the CM/ECF system which caused the parties on the electronic service list, as more fully set forth in the Notice of Electronic Filing, to be served via electronic mail.

Additionally, I have mailed a copy of the foregoing to the following defendants at the addresses listed below:

Nelda Archuleta
Route 1 Box 15 Terrace Farm Road
Española, NM 87532

Margarita Maes Ryzdynski
10512 Sea Palm Avenue
Las Vegas, NV 89134

Gilbert Maes
Box 179
Lumberton, NM 87547

Azalea Maes
1622 So. Pacific Street, Apt. A
Oceanside, CA 92056

Celeste Maes
1906 S. Tremont Street, Apt. C
Oceanside, CA 92054

Immanuel Maes
2363 Botulph Road
Santa Fe, NM 87505

Petra Maes
2363 Botulph Road
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Lorie Martinez
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Charlie Chacon and Geralda M. Chacon
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Ronnie Garcia
HC 63 Box 270112
Fruitland, UT 84027

/s/ Felicity Strachan
Felicity Strachan